

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

ANTHONY O. LONGSTREET, SR.,

Plaintiff,

v.

DAVID P. WELLS, *et. al.*,

Defendants.

Case No. 3:22-CV-00065-MMD-CLB

**REPORT AND RECOMMENDATION OF  
U.S. MAGISTRATE JUDGE<sup>1</sup>**

Before the Court is Plaintiff Anthony Longstreet's ("Longstreet"), application to proceed *in forma pauperis* (ECF No. 1), and complaint (ECF No. 1-1). For the reasons stated below, the Court recommends that Longstreet's *in forma pauperis* application, (ECF No. 1), be granted, and his complaint (ECF No. 1-1), be dismissed without prejudice and without leave to amend.

**I. IN FORMA PAUPERIS APPLICATION**

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

Pursuant to the LSR 1-1: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities."

---

<sup>1</sup> This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1            “[T]he supporting affidavit [must] state the facts as to [the] affiant’s poverty with  
 2            some particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th  
 3            Cir. 1981) (quotation marks and citation omitted). A litigant need not “be absolutely  
 4            destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*,  
 5            335 U.S. 331, 339 (1948).

6            A review of the application to proceed IFP reveals Longstreet cannot pay the filing  
 7            fee; therefore, the Court recommends that the application, (ECF No. 1), be granted and  
 8            Longstreet be granted permission to proceed IFP.

## 9            **II. SCREENING STANDARD**

10            Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A  
 11            provides, in relevant part, that “the court shall dismiss the case at any time if the court  
 12            determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a  
 13            claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant  
 14            who is immune from such relief.” 28 U.S.C. § 1915A(b). A complaint is frivolous when  
 15            “it lacks an arguable basis in either law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325  
 16            (1989). This includes claims based on legal conclusions that are untenable (e.g., claims  
 17            against defendants who are immune from suit or claims of infringement of a legal interest  
 18            which clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,  
 19            delusional scenarios). *Id.* at 327–28; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th  
 20            Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same  
 21            standard applied in the context of a motion to dismiss under Federal Rule of Civil  
 22            Procedure 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which  
 23            requires dismissal where the complaint fails to “state a claim for relief that is plausible on  
 24            its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

25            The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*  
 26            *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must  
 27            accept as true all well-pled factual allegations, set aside legal conclusions, and verify  
 28            that the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S.

662, 679 (2009). The complaint need not contain detailed factual allegations, but must offer more than “a formulaic recitation of the elements of a cause of action” and “raise a right to relief above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is taken in reviewing the pleadings of a *pro se* party, for a more forgiving standard applies to litigants not represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Still, a liberal construction may not be used to supply an essential element of the claim not initially pled. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is appropriate, a *pro se* plaintiff should be given leave to amend the complaint and notice of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

### III. SCREENING OF COMPLAINT

In his complaint, Longstreet sues Defendants David Wells, Hayden Solis, P. Salinas, P. Aguilar, and Knickerbocker (collectively referred to as “Defendants”) under 42 U.S.C. § 1983. (See ECF No. 1-1.) Longstreet alleges that on March 1, 2020, Defendants placed Longstreet under arrest “for a warrant,” confiscated his cell phone, and conducted a warrantless search into the phone for evidence of an unrelated incident, which violated Longstreet’s Fourth and Sixth Amendment rights. (*Id.* at 2.) Longstreet further alleges that the confiscation of his cell phone prevented him from “obtaining his material witness.” (*Id.* at 5.) Finally, Longstreet asserts that he “was prejudiced to a fair (sic) judicial criminal process which ultimately resulted in loss [of] income, loss of apartment and personal items, loss of children and loss of vehicle due to the deprivation of his cell phone data (phone numbers), which were pertinent to [Longstreet’s] defense.” (*Id.*) Longstreet requests monetary and declaratory relief. (*Id.* at 6.)

42 U.S.C. § 1983 aims “to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir. 2000)). The statute “provides a federal cause of action against any person who, acting under color of state law, deprives another of his federal rights[.]” *Conn v. Gabbert*, 526

1 U.S. 286, 290 (1999), and is “merely . . . the procedural device for enforcing substantive  
2 provisions of the Constitution and federal statutes.” *Crumpton v. Gates*, 947 F.2d 1418,  
3 1420 (9th Cir. 1991). Claims under § 1983 require the plaintiff to allege (1) the violation  
4 of a federally-protected right by (2) a person or official who acts under the color of state  
5 law. *Anderson*, 451 F.3d at 1067.

6 However, § 1983 is not a backdoor through which a federal court may overturn a  
7 state court conviction or award relief related to the fact or duration of a sentence. Section  
8 1983 and “the federal habeas corpus statute . . . both provide access to the federal courts  
9 ‘for claims of unconstitutional treatment at the hands of state officials, . . . [but] they  
10 different in their scope and operation.’” *Ramirez v. Galaza*, 334 F.3d 850, 854 (9th Cir.  
11 2003) (quoting *Heck v. Humphrey*, 512 U.S. 477, 48 (1994)). Federal courts must take  
12 care to prevent prisoners from relying on § 1983 to subvert the differing procedural  
13 requirements of *habeas corpus* proceedings under 28 U.S.C. § 2254. *Heck*, 512 U.S. at  
14 486-87; *Simpson v. Thomas*, 528 F.3d 685, 695 (9th Cir. 2008). When a prisoner  
15 challenges the legality or duration of his custody, raises a constitutional challenge which  
16 could entitle him to an earlier release, or seeks damages for purported deficiencies in his  
17 state court criminal case, which effected a conviction or lengthier sentence, his sole  
18 federal remedy is a writ of *habeas corpus*. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997);  
19 *Heck*, 512 U.S. at 481; *Wolf v. McDonnell*, 418 U.S. 539, 554 (1974); *Preiser v.*  
20 *Rodriguez*, 411 U.S. 475 (1973); *Simpson*, 528 F.3d at 692-93. Stated differently, where  
21 “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction  
22 or sentence,” then “the complaint must be dismissed unless the plaintiff can demonstrate  
23 that the conviction or sentence has already been invalidated.” *Heck*, 512 U.S. at 487.

24 It appears that Longstreet is challenging the constitutionality of his state court  
25 criminal convictions. Consequently, he must demonstrate that his conviction has been  
26 overturned to proceed in an action under § 1983. As he has not done so, his sole relief is  
27 a *habeas corpus* action. The Court, therefore, recommends that the complaint be  
28 dismissed without prejudice and without leave to amend. See, e.g., *Szajer v. City of Los*

1 *Angeles*, 632 F.3d 607, 611–12 (9th Cir. 2011) (concluding that Fourth Amendment  
2 unlawful search claim was not cognizable under § 1983 because a finding that there was  
3 no probable cause for the search would necessarily imply the invalidity of plaintiffs’  
4 conviction for felony possession of a pistol).

5 **IV. CONCLUSION**

6 For good cause appearing and for the reasons stated above, the Court  
7 recommends that Longstreet’s application to proceed *in forma pauperis*, (ECF No. 1), be  
8 granted, and his complaint, (ECF No. 1-1), be dismissed without prejudice and without  
9 leave to amend.

10 The parties are advised:

11 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
12 Practice, the parties may file specific written objections to this Report and  
13 Recommendation within fourteen days of receipt. These objections should be entitled  
14 “Objections to Magistrate Judge’s Report and Recommendation” and should be  
15 accompanied by points and authorities for consideration by the District Court.

16 2. This Report and Recommendation is not an appealable order and any  
17 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the  
18 District Court’s judgment.

19 **V. RECOMMENDATION**

20 **IT IS THEREFORE RECOMMENDED** that Longstreet’s application to proceed *in*  
21 *forma pauperis*, (ECF No. 1), be **GRANTED**;

22 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** the complaint, (ECF No. 1-  
23 1); and,

24 **IT IS FURTHER RECOMMENDED** that Longstreet’s complaint, (ECF No. 1-1), be  
25 **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND**.

26 **DATED:** February 11, 2022.

27   
28 **UNITED STATES MAGISTRATE JUDGE**